

# United States District Court

DISTRICT OF  
RHODE ISLAND

DANIEL WEISMAN, personally and as  
next friend of DEBORAH WEISMAN

## SUMMONS IN A CIVIL ACTION

CASE NUMBER:

**CA89-0377**

v.

ROBERT E. LEE, individually and as  
principal of THE NATHAN BISHOP MIDDLE  
SCHOOL, ET ALS

TO: (Name and Address of Defendant)

ROBERT E. LEE  
THE NATHAN BISHOP MIDDLE SCHOOL  
101 Session Street  
Providence, Rhode Island

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Sandra A. Blanding, Esquire  
REVENS & DeLUCA LTD.  
946 Centervill Road  
Warwick, RI 02886  
401-822-2900

an answer to the complaint which is herewith served upon you, within Twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

CLERK

DATE

6/16/89

*Hallie Lawton*  
BY DEPUTY CLERK

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

DANIEL WEISMAN, personally :  
and as next friend of DEBORAH :  
WEISMAN :

v. :

C.A. NO. 89-

ROBERT E. LEE, indivi- :  
dually and as principal of THE :  
NATHAN BISHOP MIDDLE SCHOOL; :  
JOSEPH ALMAGNO, individually :  
and as Superintendent of :  
Schools for the Providence :  
School Department; VINCENT :  
McWILLIAMS; ROBERT DeROBBIO; :  
MARY BATASTINI; ALBERT LEPORE; :  
ROOSEVELT BENTON; MARY SMITH; :  
ANTHONY CAPRIO; BRUCE SUNDLUN; :  
and ROBERTO GONZALEZ, indivi- :  
dually and as members of the :  
Providence School Committee :

**CA89-0377**

AFFIDAVIT OF DANIEL WEISMAN

The undersigned, being duly sworn on oath, hereby deposes  
and states as follows:

1. I am the father of Deborah Weisman, age 14, who is  
presently an eighth grade student at Nathan Bishop Middle School  
in Providence, Rhode Island.

2. Nathan Bishop Middle School is sponsoring an eighth  
grade graduation ceremony for parents, friends and students on  
June 20, 1989.

3. Both I and my daughter plan to attend this graduation.

4. The graduation will be held on the grounds of the Nathan  
Bishop Middle School.

5. On or about May 24, 1989, I learned that the afore-  
mentioned graduation ceremony is to include an invocation and  
benediction in the form of prayer, to be offered by a Jewish

benediction in the form of prayer, to be offered by a Jewish rabbi.

6. Several years ago, when my older child graduated from Nathan Bishop Middle School, a Baptist minister, who was identified by the church with which he was affiliated, delivered an invocation and benediction which included several references to Jesus and his role in the graduating eighth-graders' lives.

7. I personally object to and am offended by the inclusion of prayer in my child's graduation ceremony from a public school.

8. My child has advised me that she is expected by the school to attend her graduation, and indeed she should feel comfortable and free in doing so.

9. After learning that prayer was to be included in this year's graduation ceremony at Nathan Bishop Middle School, I expressed my objections and concerns to Defendant ROBERT E. LEE, principal of the school.

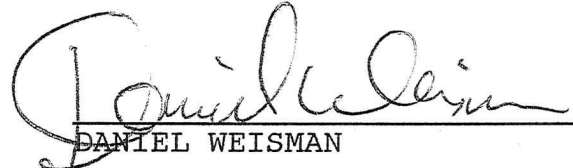
10. I have been advised by Defendant ROBERT E. LEE that the ceremony will include prayer, as originally planned.

11. By information and belief, the religious representative giving the invocation and benediction is free to determine their content.

12. I have attended at least one Providence public school graduation at which no prayer was included.

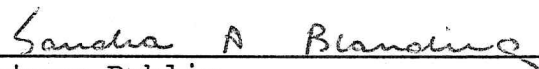
13. I feel that inclusion of prayer in a public school graduation ceremony suggests government sponsorship of prayer and advances religion.

14. Both I and my child will be irreparably harmed by the inclusion of prayer in her Providence public school graduation, in violation of our constitutionally protected rights.

  
DANIEL WEISMAN

STATE OF RHODE ISLAND  
COUNTY OF KENT

In Warwick, on the 16th day of June, 1989, before me personally appeared DANIEL WEISMAN, to me known and known by me to be the party executing the foregoing instrument and he acknowledged said instrument by him executed, to be his free act and deed.

  
Notary Public  
My commission expires: 6/30/91

(WEIS.AFF)  
jac 6/16/89



## WHAT IS THE NCCJ?

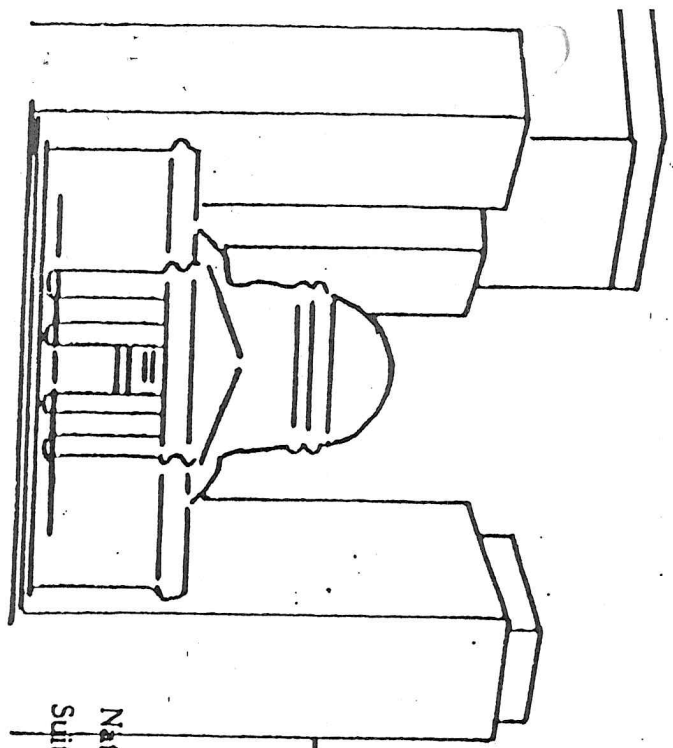
The National Conference of Christians and Jews is an organization of people from different religious, racial and ethnic backgrounds learning to live together without bigotry or discrimination and without compromising distinctive faiths or identities. Founded in 1928, NCCJ promotes education for citizenship in a pluralistic society, and attempts to help diverse people discover their mutual self-interests on the common ground of democracy. NCCJ has 73 offices nationwide.

NATIONAL CONFERENCE  
OF CHRISTIANS & JEWS  
345 BLACKSTONE BLVD., HALL BLDG.  
PROVIDENCE, R.I. 02906

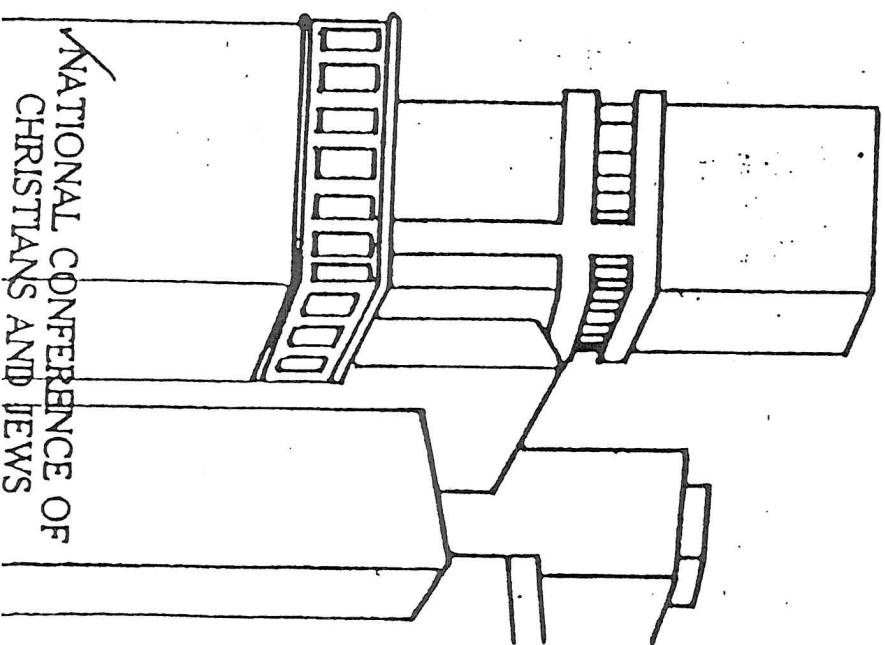
## PUBLIC PRAYER IN A PLURALISTIC SOCIETY

# Guidelines for Civic Occasions

Public prayer in a pluralistic society must be sensitive to a diversity of faiths. Leading public prayer is both a privilege and a responsibility.



National Conference of Christians and Jews  
Suite 1100, 71 Fifth Ave., N.Y., N.Y.



NATIONAL CONFERENCE OF  
CHRISTIANS AND JEWS

## Guidelines for Civic Occasions

**S**poken prayer is common on many civic occasions such as club meetings, legislative sessions, graduations, political rallies, testimonial dinners and community forums. Prayer in settings which are primarily secular should bind a group together in a common concern. However, it can become divisive, even if not intended, when forms or language exclude some persons.

**I**ndividuals who lead the general community in prayer have a responsibility to be clear about the purpose as well as the nature of the occasion. Prayer on behalf of the *general community* should be *general prayer*. General prayer is inclusive, non-sectarian and carefully planned to avoid embarrassments and misunderstandings. Those who are reluctant to offer general prayer should be given the option of declining an invitation.

**G**eneral public prayer on civic occasions is authentic prayer that also enables people to recognize the pluralism of American society.

**P**rayer of any kind may be inappropriate on some civic occasions. Decisions should show respect both for public diversity and for the serious nature of prayer.

## GENERAL PUBLIC PRAYER—

- ...seeks the highest common denominator without compromise of conscience.
- ...calls upon God on behalf of the particular public gathered; avoids individual petitions.
- ...uses forms and vocabulary that allow persons of different faiths to give assent to what is said.
- ...uses universal, inclusive terms for deity rather than particular proper names for divi manifestations. Some opening ascriptions are "Mighty God," "Our Maker," "Source of all Being," "Creator and Sustainer." Possible closing words are "Hear Our Prayer," "In Thy Name, Goodness Flourish," or, simply, "Amen."
- ...uses the language most widely understood in the audience, unless one purpose of the event is to express ethnic/cultural diversity, in which case multiple languages can be effective.
- ...considers other creative alternatives, including a moment of silence.
- ...remains faithful to the purposes of acknowledging divine presence and seeking blessing, as opportunity to preach, argue or testify.

These guidelines for inclusiveness and sensitivity on prayer should also apply to the content of meditations or addresses on civic occasions, and to the selection and performance of music.

0 20-03  
NATHAN BISHOP GRADUATION

INVOCATION

GOD OF THE FREE, HOPE OF THE BRAVE:

FOR THE LEGACY OF AMERICA WHERE DIVERSITY IS CELEBRATED AND THE RIGHTS OF MINORITIES ARE PROTECTED, WE THANK YOU. MAY THESE YOUNG MEN AND WOMEN GROW UP TO ENRICH IT.

FOR THE LIBERTY OF AMERICA, WE THANK YOU. MAY THESE NEW GRADUATES GROW UP TO GUARD IT.

FOR THE POLITICAL PROCESS OF AMERICA IN WHICH ALL ITS CITIZENS MAY PARTICIPATE, FOR ITS COURT SYSTEM WHERE ALL CAN SEEK JUSTICE WE THANK YOU. MAY THOSE WE HONOR THIS MORNING ALWAYS TURN TO IT IN TRUST.

FOR THE DESTINY OF AMERICA WE THANK YOU. MAY THE GRADUATES OF NATHAN BISHOP MIDDLE SCHOOL SO LIVE THAT THEY MIGHT HELP TO SHARE IT.

MAY OUR ASPIRATIONS FOR OUR COUNTRY AND FOR THESE YOUNG PEOPLE, WHO ARE OUR HOPE FOR THE FUTURE, BE RICHLY FULFILLED.

AMEN

NATHAN BISHOP GRADUATION  
BENEDICTION

O GOD, WE ARE GRATEFUL TO YOU FOR HAVING ENDOWED US WITH THE CAPACITY FOR LEARNING WHICH WE HAVE CELEBRATED ON THIS JOYOUS COMMENCEMENT.

HAPPY FAMILIES GIVE THANKS FOR SEEING THEIR CHILDREN ACHIEVE AN IMPORTANT MILESTONE. SEND YOUR BLESSINGS UPON THE TEACHERS AND ADMINISTRATORS WHO HELPED PREPARE THEM.

THE GRADUATES NOW NEED STRENGTH AND GUIDANCE FOR THE FUTURE. HELP THEM TO UNDERSTAND THAT WE ARE NOT COMPLETE WITH ACADEMIC KNOWLEDGE ALONE. WE MUST EACH STRIVE TO FULFILL WHAT YOU REQUIRE OF US ALL! TO DO JUSTLY, TO LOVE MERCY, TO WALK HUMBLY.

WE GIVE THANKS TO YOU, LORD, FOR KEEPING US ALIVE, SUSTAINING US AND ALLOWING US TO REACH THIS SPECIAL, HAPPY OCCASION.

AMEN

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

DANIEL WEISMAN, personally :  
and as next friend of DEBORAH :  
WEISMAN :

v. :

C.A. NO. 89- 377-B

ROBERT E. LEE, indivi- :  
dually and as principal of THE :  
NATHAN BISHOP MIDDLE SCHOOL; :  
JOSEPH ALMAGNO, individually :  
and as Superintendent of :  
Schools for the Providence :  
School Department; VINCENT :  
McWILLIAMS; ROBERT DeROBBIO; :  
MARY BATASTINI; ALBERT LEPORE; :  
ROOSEVELT BENTON; MARY SMITH; :  
ANTHONY CAPRIO; BRUCE SUNDLUN; :  
and ROBERTO GONZALEZ, indivi- :  
dually and as members of the :  
Providence School Committee :


JUDGMENT

1. The inclusion of prayer in the form of invocations or benedictions at public school promotion or graduation exercises in the City of Providence is unconstitutional in violation of the First Amendment of the United States Constitution.

2. The School Committee of the City of Providence, its agents or employees, are permanently restrained and enjoined from authorizing or encouraging the use of prayer in connection with school graduation or promotion exercises.

SO ORDERED,

ENTERED:

  
FRANCIS J. BOYLE, CHIEF JUDGE  
United States District Court  
District of Rhode Island

Dated: January 12, 1990

(WEISMAN.ORD)

20

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

DANIEL WEISMAN, personally :  
and as next friend of DEBORAH :  
WEISMAN :

VS. :

NO. 89-0377B

ROBERT E. LEE, individually and: :  
as principal of NATHAN BISHOP :  
MIDDLE SCHOOL; ET AL :

AGREED STATEMENT OF FACTS

1. Plaintiff, DANIEL WEISMAN, is now and has been since 1981, a resident of the City of Providence, State of Rhode Island. Plaintiff, DANIEL WEISMAN owns and has owned since 1982, real property located within the City of Providence. Since 1981, Plaintiff, DANIEL WEISMAN has paid and continues to pay real and personal property taxes to the City of Providence.

2. Plaintiff, DANIEL WEISMAN is now and at all times pertinent hereto has been a citizen of the United States.

3. Plaintiff, DANIEL WEISMAN is the father of Deborah Weisman, age 14, who has attended and continues to attend the public schools owned and operated by the City of Providence. Deborah Weisman graduated from the eighth grade at the Nathan Bishop Middle School in June, 1989, and now attends Classical High School. Both of the aforementioned schools are public schools owned and operated by the City of Providence and are within the jurisdiction of the Defendant Members of the Providence School Committee and the Defendant Superintendent of Schools of

the City of Providence.

4. The City of Providence uses and has used, at all times pertinent hereto, taxes raised from real and personal property located in the City of Providence to fund and operate the public schools located within the City, including the Nathan Bishop Middle School and Classical High School.

5. Defendant, ROBERT E. LEE is now and at all times pertinent hereto has been the principal of the Nathan Bishop Middle School, and as such is the administrator of said school.

6. Defendant THOMAS MEZZANOTTE is now and at all times pertinent hereto has been the principal of Classical High School and as such is the administrator of said school.

7. Defendant JOSEPH ALMAGNO is now and at all times pertinent hereto has been the superintendent of the Providence Public Schools, including but not limited to the Nathan Bishop Middle School and Classical High School and as such is responsible for the overall administration and supervision of the Providence Public Schools and of the implementation of the policies of the Providence School Committee.

8. Defendants VINCENT McWILLIAMS, ROBERT DeROBBIO, MARY BATASTINI, ALBERT LEPORE, ROOSEVELT BENTON, MARY SMITH, ANTHONY CAPRIO, BRUCE SUNDLUN, and ROBERT GONZALEZ are now and at all times pertinent hereto have been members of the Providence School Committee and as such are responsible for the policies, operation, and supervision of the Providence Public Schools, including but not limited to the Nathan Bishop Middle School and Classical

High School.

9. Defendants herein have at all times pertinent hereto been acting under color of state law.

10. The Providence School Department, acting as an agency of the City of Providence and the State of Rhode Island, under the authority and control of the Defendant Members of the Providence School Committee, are now and at all times pertinent hereto have been owners of the public schools located in the City of Providence and of all the equipment located therein.

11. The Defendant Members of the Providence School Committee and Superintendent of Schools sponsor, each year in the month of June, graduation and/or promotional ceremonies for the middle schools and high schools operated as public schools in the City of Providence, including the Nathan Bishop Middle School and Classical High School.

12. The Defendant Members of the Providence School Committee and the Superintendent of Schools are responsible for supervising and authorizing the content of the graduation and/or promotional ceremonies sponsored by the various public schools within the City of Providence.

13. The Defendant Members of the Providence School Committee and the Defendant Superintendent of the Schools are aware of, permit, and have authorized the principals of the various public schools within the City of Providence to include invocations and benedictions in the form of prayer, delivered by clergy, in the graduation ceremonies of the various public schools in the



City of Providence.

14. Defendant ROBERT E. LEE, principal of the Nathan Bishop Middle School, received, from Assistant Superintendent of Schools Arthur Zarrella, a document entitled "Guidelines for Civic Occasions" as a guideline for the type of prayer to be included in the graduation ceremony of the Nathan Bishop Middle School. A copy of the aforementioned "Guidelines" is attached as Exhibit A and by reference incorporated herein.

15. Assistant Superintendent Arthur Zarrella sent the same "Guidelines for the Civic Occasions," set forth above as Exhibit A, to the principals of all of the City of Providence public schools.

16. The graduation ceremony at the Nathan Bishop Middle School held in June, 1989, was planned by two teachers and employees of the Providence School Department, who suggested to Defendant ROBERT E. LEE that Rabbi Leslie Y. Gutterman be asked to deliver the invocation and benediction at the June, 1989, promotional ceremony at the Nathan Bishop Middle School. Defendant ROBERT E. LEE accordingly requested Rabbi Gutterman to perform the same.

17. Defendant ROBERT E. LEE provided to Rabbi Gutterman a copy of the "Guidelines for Civic Occasions," set forth above as Exhibit A, and, in addition, spoke personally to Rabbi Gutterman to advise him that prayers that he gave at the invocation and benediction should be non-sectarian in nature.

18. Invocations and benedictions in the form of prayer

have been included in some but not all of the graduation and/or promotional ceremonies of the high schools and middle schools operated by Defendant Members of the Providence School Committee in prior years and during 1989.

19. From 1985 through 1989, graduation ceremonies of Central High School were held at Veterans Memorial Auditorium, which the Providence School Department rented for the occasion. During each of the aforementioned years, Central High School produced and distributed programs describing the graduation ceremony which include the following information: 1985 Invocation Reverend Raymond Tetreault, St. Michael's Church, Benediction Lucy Santa, St. Michael's Church; 1986 Invocation Reverend William Tanguay, St. Michael's Church, Benediction Lucy Santa, St. Michael's Church; 1987 Invocation Reverend Raymond Malm, St. Michael's Church, Benediction Lucy Santa, St. Michael's Church; 1988 Invocation Dr. Virgil A. Wood, Pond Street Baptist Church, Benediction Dr. Virgil A. Wood, Pond Street Baptist Church; 1989 Invocation Reverend Moises Mercedes, Star of Jacob Christian Church, Benediction Reverend Moises Mercedes, Star of Jacob Christian Church.

20. For the years 1985 through 1989, Classical High School produced and distributed programs of the graduation ceremonies which indicate the following: 1985 Invocation Reverend Daniel M. Azzarone, Assistant Pastor, St. Anne's Church, Providence, Benediction Rabbi Shalom Strajcher, Providence Hebrew Day School; 1986 Invocation Dr. Virgil A. Wood, Pastor, Pond Street Baptist Church, Benediction Reverend Daniel M. Trainor, Pastor, Assumption

of the Blessed Virgin Mary Church; 1987 Invocation Rabbi Daniel Liben, Temple Emmanuel, Benediction Reverend Patrick Soares, Assistant Pastor, Holy Name Church; 1988 Invocation Rabbi Leslie Gutterman, Temple Beth El, Benediction Reverend Dr. H. Lincoln Oliver, Olney Street Baptist Church; 1989 Invocation Rabbi Wayne M. Franklin, Temple Emanu-El, Benediction Reverend Robert Randall, Pastor, St. Sebastian's Church.

21. For the years 1985 through 1987 and 1989 graduation ceremonies of Hope High School were held at Veterans Memorial Auditorium, which the Providence School Department rented for the occasion. During each of the aforementioned years, Hope High School produced and distributed programs describing the graduation ceremony which include the following information: 1985 Benediction Dr. Daniel Brown; 1986 Invocation Reverend David Russ, Benediction Reverend David Russell; 1987 Invocation Reverend David Russell, God's Holy Tabernacle Church, Benediction Reverend David Russell; 1989 Invocation Reverend David Russell, God's Holy Tabernacle Church, Benediction Reverend David Russell.

22. For the years 1985 through 1988, Mount Pleasant High School held its graduation ceremonies at Rhode Island College. In 1989, graduation ceremonies for Mount Pleasant High School were held at Veterans Memorial Auditorium which the Providence School Department rented for the occasion. During each of the aforementioned years, Mount Pleasant High School produced and distributed programs describing the graduation ceremony which include the following information: 1985 Invocation Reverend

Frederick J. Halloran, Pastor, St. Theresa's Church, Benediction Reverend Frederick J. Halloran; 1986 Invocation Reverend Frederick J. Halloran, Pastor, St. Theresa's Church, Benediction Reverend Frederick J. Halloran; 1987 Invocation Reverend Frederick J. Halloran, Pastor, St. Theresa's Church, Benediction Reverend Frederick J. Halloran; 1988 Invocation Reverend Marcel E. Pincince, Blessed Sacrament Church, Benediction Reverence Marcel E. Pincince; 1989 Invocation Reverend Mario Bordignon, Pastor, St. Bartholomew's Church, Benediction Reverend Mario Bordignon, Pastor St. Bartholomew's Church.

23. For the years 1985, 1986, 1988 and 1989, Samuel W. Bridgham Middle School promotional ceremonies were held on school property. During each of the aforementioned years, Samuel W. Bridgham Middle School produced and distributed programs describing the promotional ceremony which include the following information: 1985 Invocation Father Peter Polo, Pastor, Holy Ghost Church; 1986 Invocation Reverend W.H. Johnson, Adventist Church; 1988 Reverend Clyde Walsh, St. Matthew's Church; 1989 Invocation Reverend W.H. Johnson, Adventist Church.

24. For the years 1983 through 1989, the Nathan Bishop Middle School promotional ceremonies were held on school property. During each of the aforementioned years, Nathan Bishop Middle School produced and distributed programs describing the promotional ceremony which include the following information: 1983 Invocation Father Patrick Soares, Holy Name Church, Benediction Father Patrick Soares, Holy Name Church, 1984 Invocation Reverend

Earl Hunt, Benediction Reverend Earl Hunt; 1985 Invocation Reverend Bertrand Theroux, Benediction Reverend Bertrand Theroux; 1986 Invocation Reverend Robert E. Farrow, Benediction Reverend Robert E. Farrow; 1987 Invocation Rabbi Mark Jagolinzer, Benediction Rabbi Mark Jagolinzer; 1988 Invocation Reverend Dr. Lincoln Oliver, Benediction Reverend Dr. Lincoln Oliver; 1989 Invocation Rabbi Leslie Gutterman, Benediction Rabbi Leslie Gutterman.

25. During the years 1984, 1986, 1987 and 1989, Nathaniel Greene Middle School held promotional ceremonies on school property. During each of the aforementioned years, Nathaniel Greene Middle School produced and distributed programs of the promotional ceremonies which indicate that no invocations or benedictions in the form of prayer were included in the ceremonies.

26. During the years 1985 through 1989, Windmill Intermediate School held promotional ceremonies on school property. During each of the aforementioned years, Windmill Intermediate School produced and distributed programs of the promotional ceremonies which indicate that no invocations or benedictions in the form of prayer were included in the ceremonies.

27. During the years 1983 through 1986 and 1989, Roger Williams Middle School held promotional ceremonies on school property. During each of the aforementioned years, Roger Williams Middle School produced and distributed programs of the promotional ceremonies which indicate that no invocations or benedictions in the form of prayer were included in the ceremonies.

28. During the years 1985 through 1989, the Oliver Hazard Perry Middle School held promotional ceremonies on school property. During each of the aforementioned years, Oliver Hazard Perry Middle School produced and distributed programs of the promotional ceremonies which indicate that no invocations or benedictions in the form of prayer were included in the ceremonies.

29. During the years 1985 through 1989, the Alternate Learning Project held graduation ceremonies on school property. During each of the aforementioned years, the Alternate Learning Project produced and distributed programs of the promotional ceremonies which indicate that no invocations or benedictions in the form of prayer were included in the ceremonies.

30. All of the aforementioned schools are public schools located within the City of Providence and within the jurisdiction of Defendant Members of the Providence School Committee and Defendant Superintendent of Schools.

31. Each of the aforementioned invocations and benedictions delivered during the graduation and/or promotional ceremonies were prayers.

32. During the time that the Defendant ROBERT E. LEE served as Assistant Principal at Hope High School, a public school operated by the Providence School Department in the City of Providence, from 1983 to 1988 prayers were included at all the graduation ceremonies at Hope High School.

33. During the time that the Defendant ROBERT E. LEE served

as Assistant Principal at Central High School, a public school operated by the Providence School Department in the City of Providence, from 1976 to 1983 prayers were included at all the graduation ceremonies at Central High School.

34. Graduation and/or promotional ceremonies sponsored by the Providence School Department within the middle schools and high schools under the jurisdiction of the Defendant Members of the Providence School Committee and Defendant Superintendent of Schools are conducted either on school premises or in facilities which the school department rents, using tax funds. The school facilities themselves are owned by the City of Providence.

35. The graduation ceremony for the eighth grade class of the Nathan Bishop Middle School, which class included Deborah Weisman, was held on the morning of June 20, 1989, on the premises of the Nathan Bishop Middle School.

36. The graduation ceremony of the Nathan Bishop Middle School on June 20, 1989, included an invocation and benediction in the form of prayer, delivered by Rabbi Leslie Y. Gutterman. The contents of the aforementioned invocation and benediction are attached hereto as Exhibit B and by reference made a part hereof.

37. The graduation ceremony of Classical High School held in June, 1989, on the premises of Classical High School, also included an invocation and benediction in the form of prayer.

38. It is the practice of Defendant THOMAS MEZZANOTTE to include an invocation and benediction in the form of prayer in

the graduation ceremonies that take place each year at Classical High School.

39. The graduation and promotional ceremonies held at the middle schools and high schools operated by the Providence School Department are supervised by employees and agents of Defendant Members of the Providence School Committee.

40. The invocations and benedictions delivered at the graduation and promotional ceremonies in the Providence public schools are delivered by members of the clergy chosen by agents of the Defendant Members of the Providence School Committee. These individuals are identified by name at the graduation and/or promotional ceremony at which they are speaking.

41. Attendance at graduation and promotional ceremonies is voluntary.

42. Parents and friends of students participating in promotional and/or graduation ceremonies at the Providence public schools are invited to attend the school's ceremonies.

43. Plaintiff, DANIEL WEISMAN, is opposed to and offended by the inclusion of prayer in the public school graduation and/or promotional ceremonies of his child both at the middle school and the high school level.

44. Municipal tax funds are used to operate and maintain the Providence public schools and to fund their graduation and/or promotional ceremonies.

45. Plaintiff, DANIEL WEISMAN, is opposed to the expenditure of his tax funds for school ceremonies which include prayer.



46. Some of the Providence public schools do not regularly include invocations and benedictions in the form of prayer in their graduation and/or promotional ceremonies.

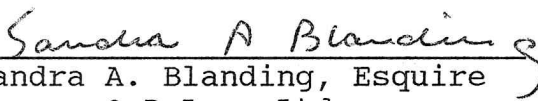
47. Plaintiff, DANIEL WEISMAN, belongs to the Jewish faith.

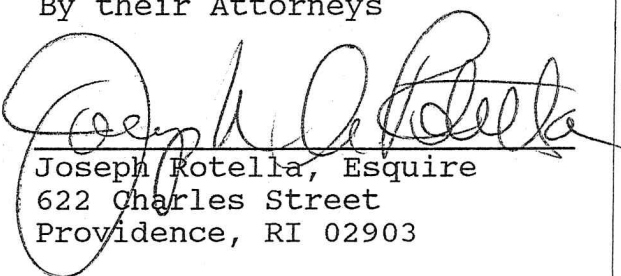
48. Defendants have no plans to change their policy as to the inclusion of invocations and benedictions in the form of prayer at the graduation and/or promotional ceremonies of the Providence High Schools and Middle Schools. Accordingly, it is probable that future graduation ceremonies at various Providence public schools will include invocations and benedictions in the form of prayer.

49. Defendants intend to continue to allow the inclusion of invocations and benedictions in the form of prayer at the graduation and/or promotional ceremonies of the Providence public high schools and middle schools.

Plaintiff  
By his Attorneys

Defendants  
By their Attorneys

  
Sandra A. Blanding, Esquire  
Revens & DeLuca Ltd.  
946 Centerville Road  
Warwick, RI 02886  
(401) 822-2900

  
Joseph Rotella, Esquire  
622 Charles Street  
Providence, RI 02903

(WEISMAN.MEM)  
jac 10/3/89  
jac 10/4/89 rev  
jac 10/9/89 rev

RECEIVED  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

OCT 19 1989

DANIEL WEISMAN, personally :  
and as next friend of DEBORAH :  
WEISMAN :

VS. :

ROBERT E. LEE, individually and: :  
as principal of NATHAN BISHOP :  
MIDDLE SCHOOL; ET AL :

CLERK  
U. S. DISTRICT COURT  
DISTRICT OF RHODE ISLAND  
NO. 89-0377B

SUPPLEMENTAL AGREED STATEMENT OF FACTS

1. The Defendants have not specifically directed any of their agents to request clergy to deliver prayers at the promotional and/or graduation ceremonies sponsored by the Providence public schools.

Plaintiff  
By his Attorneys

Defendants  
By their Attorneys

Sandra A. Blanding  
Sandra A. Blanding, Esquire  
Revens & DeLuca Ltd.  
946 Centerville Road  
Warwick, RI 02886  
(401) 822-2900

Joseph A. Rotella  
Joseph Rotella, Esquire  
622 Charles Street  
Providence, RI 02903

(WEISMAN1.MEM)  
jac 10/10/89

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

DANIEL WEISMAN, personally :  
and as next friend of DEBORAH :  
WEISMAN :

v. :

C.A. NO. 89-0377B

ROBERT E. LEE, indivi- :  
dually and as principal of THE :  
NATHAN BISHOP MIDDLE SCHOOL; :  
THOMAS MEZZANOTTE, individually :  
and as principal of CLASSICAL :  
HIGH SCHOOL; JOSEPH ALMAGNO, :  
individually and as Superin- :  
tendent of Schools for the :  
Providence School Department; :  
VINCENT McWILLIAMS; ROBERT :  
DeROBBIO; MARY BATASTINI; :  
ALBERT LEPORE; ROOSEVELT :  
BENTON; MARY SMITH; ANTHONY :  
CAPRIO; BRUCE SUNDLUN; and :  
ROBERTO GONZALEZ, indivi- :  
dually and as members of the :  
Providence School Committee :

AMENDED VERIFIED COMPLAINT

I. JURISDICTION

1. This is a civil action brought under 42 USC §§1983 and 1988 by Plaintiffs to secure injunctive relief against the inclusion of prayer in the graduation ceremonies held in and/or sponsored by the various public schools in the City of Providence and to secure declaratory judgment that inclusion of prayer in public school graduation ceremonies in the City of Providence violates the First and Fourteenth Amendments of the United States Constitution, and Article 1, §3 of the Rhode Island Constitution.

2. This Court has jurisdiction of the matter in controversy pursuant to 28 USC §§1331, 1343, 2201, and 2202, as well as this Court's pendent and ancillary jurisdiction.

10.

## II. PARTIES

### A. PLAINTIFFS

3. Plaintiff DANIEL WEISMAN is now and at all times pertinent hereto has been a resident and taxpayer of the City of Providence, State of Rhode and the United States of America. Plaintiff regularly pays taxes which finance the operation of city schools.

4. Plaintiff DANIEL WEISMAN is the father and next friend of Deborah Weisman, age 14, who graduated from the eighth grade at the Nathan Bishop Middle School in June, 1989, and who will attend Classical High School, a public high school in the City of Providence, in September, 1989.

### B. DEFENDANTS

5. Defendant ROBERT E. LEE is now and at all times pertinent hereto has been the principal of the Nathan Bishop Middle School, and as such is the administrator of said school. Defendant ROBERT E. LEE is sued herein individually and in his official capacity.

6. Defendant THOMAS MEZZANOTTE is now and at all times pertinent hereto has been the principal of Classical High School, and as such is the administrator of said school. Defendant THOMAS MEZZANOTTE is sued herein individually and in his official capacity.

7. Defendant JOSEPH ALMAGNO is now and at all times pertinent hereto has been the superintendent of the Providence public schools, including but not limited to the Nathan Bishop Middle

School and Classical High School, and as such is responsible for the overall administration of the Providence public schools and of the policies of the Providence School Committee. Defendant JOSEPH ALMAGNO is sued herein individually and in his official capacity.

8. Defendants VINCENT McWILLIAMS, ROBERT DeROBBIO, MARY BATASTINI, ALBERT LEPORE, ROOSEVELT BENTON, MARY SMITH, ANTHONY CAPRIO, BRUCE SUNDLUN, and ROBERTO GONZALEZ are now and at all times pertinent hereto have been members of the Providence School Committee and as such are responsible for the policies and operation of the Providence public schools, including but not limited to the Nathan Bishop Middle School and Classical High School. Defendants VINCENT McWILLIAMS, ROBERT DeROBBIO, MARY BATASTINI, ALBERT LEPORE, ROOSEVELT BENTON, MARY SMITH, ANTHONY CAPRIO, BRUCE SUNDLUN, and ROBERTO GONZALEZ are sued herein individually and in their official capacity.

9. Defendants herein have at all times pertinent hereto been acting under color of state law.

### III. STATEMENT OF FACTS

10. The Providence School Department, acting as an agency of the City of Providence and the State of Rhode Island, under the authority and control of the Defendant members of the Providence School Committee are now and at all times pertinent hereto owners of the public schools located in the City of Providence and of all equipment located therein.

11. The Defendant members of the Providence School Com-

mittee and Superintendent of Schools sponsor, each year in the month of June, graduation ceremonies for the middle schools and high schools operated as public schools in the City of Providence.

12. The Defendant members of the Providence School Committee and the Superintendent of Schools allow, permit, authorize and/or direct, as part of their official policy, the various public schools in the City of Providence to include in their respective graduation ceremonies, invocations and benedictions in the form of prayer.

13. By information and belief, in accordance with the official policy of the Defendant members of the Providence School Committee and the Superintendent of Schools, some but not all of the public middle schools and high schools located in the City of Providence have included and continue to include invocations and benedictions in the form of prayer in their graduation ceremonies.

14. The graduation ceremony for the eighth grade class of the Nathan Bishop Middle School, which class included Deborah Weisman, was held on the morning of June 20, 1989, on school grounds.

15. The graduation ceremony of the Nathan Bishop Middle School included an invocation and benediction in the form of prayer, performed by a Jewish rabbi.

16. By information and belief, the graduation ceremony of Classical High School, also held in June, 1989, on school grounds, likewise included an invocation and benediction in the form of

prayer.

17. By information and belief, it is the policy and practice of Defendants to include an invocation and benediction in the form of prayer in the graduation ceremonies which take place each year at Classical High School.

18. By information and belief, graduating eighth grade students were expected to attend the graduation ceremony at Nathan Bishop Middle School.

19. Parents and friends of graduating eighth students of Nathan Bishop Middle School, and graduating twelfth grade students of Classical High School, are invited to attend the schools' graduation ceremonies.

20. Plaintiff DANIEL WEISMAN is opposed to and offended by the inclusion of prayer in the public school graduation ceremony of his child both at the middle school and the high school level.

21. Municipal and state tax funds are used to operate and maintain the Providence public schools and to fund their graduation ceremonies.

22. Plaintiff DANIEL WEISMAN is opposed to the expenditure of his tax funds for school ceremonies which include prayer.

23. Plaintiff has no adequate remedy at law and he and his child will suffer irreparable harm by the policy of Defendants to allow and/or authorize the inclusion of prayer in the Providence public school graduation ceremonies.

24. Defendants will not be harmed by the issuance of an

injunction preventing the inclusion of prayer in the Providence public school graduation ceremonies.

25. Plaintiff DANIEL WEISMAN is likely to succeed on the merits of his complaint, as is set forth more fully herein, and in the accompanying memorandum.

#### IV. FIRST CAUSE OF ACTION

26. Plaintiff DANIEL WEISMAN hereby incorporates paragraphs 1 through 25 above and for his first cause of action allege that the inclusion of prayer in the graduation ceremonies of the Providence public schools violates the Establishment Clause of the First and Fourteenth Amendments of the United States Constitution.

#### V. SECOND CAUSE OF ACTION

27. Plaintiff DANIEL WEISMAN hereby incorporates paragraphs 1 through 25 above and for his second cause of action allege that the inclusion of prayer in the graduation ceremonies of the Providence public schools violates Article 1, §3 of the Rhode Island Constitution.

WHEREFORE, Plaintiff DANIEL WEISMAN prays:

1. For a declaratory judgment that the inclusion of prayer in the Providence public school graduation ceremonies violates the Establishment Clause of the First and Fourteenth Amendments of the United States Constitution, as well as Article 1, §3 of the Rhode Island Constitution.

2. For a temporary and permanent injunction forbidding Defendants and all persons acting under or through them to autho-



size or allow the inclusion of prayer in the Providence public school graduation ceremonies.

3. For reasonable attorney's fees and costs for the prosecution of the within action.

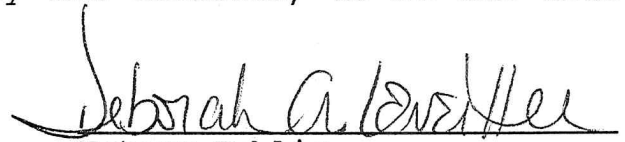
4. For such other and further relief as this Court deems just and proper.

I, DANIEL WEISMAN, first being duly sworn, on oath, depose and say that I have read the foregoing complaint and that it is true to the best of my knowledge and belief.

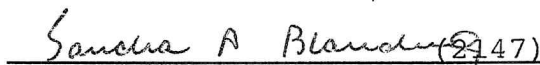
  
DANIEL WEISMAN

STATE OF RHODE ISLAND  
COUNTY OF KENT

In Warwick, on the 28<sup>th</sup> day of July, 1989, before me personally appeared DANIEL WEISMAN, to me known and known by me to be the party executing the foregoing instrument and he acknowledged said instrument by him executed, to be his free act and deed.

  
Notary Public  
My commission expires: 6/30/91

Plaintiffs  
By his Attorneys

  
Sandra A. Blanding, Esquire  
REVENS & DeLUCA LTD.  
946 Centerville Road  
Warwick, RI 02886  
(401) 822-2900

DATED: August 23, 1989

SANDRA A. BLANDING IS DESIGNATED AS TRIAL COUNSEL. (WEIS.CMP)

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

DANIEL WEISMAN, personally :  
and as next friend of DEBORAH :  
WEISMAN :

v. :

C.A. NO. 89-

ROBERT E. LEE, indivi- :  
dually and as principal of THE :  
NATHAN BISHOP MIDDLE SCHOOL; :  
JOSEPH ALMAGNO, individually :  
and as Superintendent of :  
Schools for the Providence :  
School Department; VINCENT :  
McWILLIAMS; ROBERT DeROBBIO; :  
MARY BATASTINI; ALBERT LEPORE; :  
ROOSEVELT BENTON; MARY SMITH; :  
ANTHONY CAPRIO; BRUCE SUNDLUN; :  
and ROBERTO GONZALEZ, indivi- :  
dually and as members of the :  
Providence School Committee :

CA89-0377

MOTION FOR TEMPORARY RESTRAINING ORDER

Now comes the Plaintiff in the above-entitled matter and respectfully moves that this Court grant a temporary restraining order forbidding Defendants and all persons acting under or through them to authorize or allow the inclusion of prayer in the Providence public schools' graduation ceremonies. As his grounds therefore, Plaintiff submits (a) that he and his child will suffer irreparable harm if the inclusion of prayer is allowed in the Providence public schools' graduation ceremonies; (b) that Plaintiff is likely to succeed on the merits of his case; and (c) that the Defendants will not be harmed by the issuance of a temporary restraining order.

WHEREFORE, Plaintiff prays that its within Motion for a Temporary Restraining Order be granted as set forth above.

Plaintiff  
By his Attorneys

Sandra A Blanding (2147)  
Sandra A. Blanding, Esquire  
REVENS & DeLUCA LTD.  
946 Centerville Road  
Warwick, RI 02886  
(401) 822-2900

(WEIS.MTN)  
jac 6/16/89

## CLERK'S MINUTES - GENERAL

CASE NO. 89-0377B DATE 6/19/89TITLE Wesman v LeeTIMES 4:11 TOTAL \_\_\_\_\_Honorable: Francis J. Boyle Courtroom Deputy: Lorraine KiziorCourt Reporter: Louis Spertine Interpreter: \_\_\_\_\_

Attorney for <u>plaintiff</u>	Attorney for Defendant(s)	Defendant(s)
<u>Sandra Blanding</u>	<u>Joseph Rotella</u>	_____
_____	_____	_____
_____	_____	_____

PROCEEDINGS: ☒ In Court ☐ In Chambers

Blanding petitions court to enter TRO restraining  
from having prayer said at graduation ceremony.  
Rotella, Jr. addresses court.

Court feels more time is needed to make a  
decision - papers were only received 11am today. Also, the  
person to be making invocation is not a party - Court  
denies TRO. Rotella to prepare order.

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TUESDAY, OCTOBER 10, 1989

MISS BLANDING: Your Honor, I have a memorandum I'd like to submit to the Court.

THE COURT: And do you want me to hear you or do you want me to read the memorandum, or what am I supposed to do at this point? You don't want me to do both certainly at the same time.

MISS BLANDING: No, your Honor. Your Honor put this on for this morning, I think when we came before the Court last week, I had submitted a proposed agreed statement of facts to Mr. Rotella. Mr. Rotella told me this morning that there was one addition that he wanted made which we discussed, and he advises me now that he simply has to clear that with the Superintendent of Schools.

THE COURT: Go right in there to the telephone and call him.

MR. ROTELLA: Okay, your Honor. Your Honor, I also wanted to point out that we filed a memorandum.

THE COURT: I got that this morning, too.

MR. ROTELLA: Thank you.

THE COURT: I haven't had time to read that either. Maybe while you're making the phone call, I can read your memo.

MR. ROTELLA: Thank you, your Honor.

1 (PAUSE)

2 THE COURT: I'm sorry, I did read your memo,  
3 by the way.

4 MR. ROTELLA: My memo was very short.

5 THE COURT: Very brief.

6 MR. ROTELLA: It was very brief.

7 THE COURT: This one obviously I'm not going to  
8 be able to read without a very long pause.

9 MISS BLANDING: Those are the cases, your Honor,  
10 I'm not as verbose as the Supreme Court.

11 (DOCUMENT HANDED TO COURT)

12 THE COURT: Okay, you can go call.

13 (MR. ROTELLA EXITS COURTROOM - RETURNS)

14 MR. ROTELLA: Your Honor.

15 THE COURT: What did you find out?

16 MR. ROTELLA: We have an agreement on the  
17 agreed statement of facts. We will add this paragraph  
18 to clarify.

19 THE COURT: What is the paragraph you're adding?

20 MR. ROTELLA: The paragraph reads: "The  
21 Defendants have not specifically directed any of  
22 their agents to request clergy to deliver prayers  
23 at the promotion and/or graduation ceremony sponsored  
24 by the Providence School Department."

25 THE COURT: Is that agreed to?

1 MISS BLANDING: Yes, your Honor.

2 THE COURT: All right. You have given him though  
3 the circular that tells them what kind of prayer  
4 they can say.

5 MR. ROTELLA: Yes, we have.

6 THE COURT: Okay.

7 MR. ROTELLA: But we haven't told them to deliver  
8 a prayer in that sense.

9 MISS BLANDING: Your Honor, the agreed statement  
10 of facts is typed up except for the exclusion of  
11 that paragraph.

12 THE COURT: All right, file that and you can  
13 just supplement it with that paragraph.

14 MISS BLANDING: Okay, your Honor.

15 THE COURT: All right, I'll hear you.

16 MISS BLANDING: Your Honor, other than the  
17 agreed statement of facts and the memorandum, we  
18 have no need to present additional testimony.

19 THE COURT: I'll hear you then.

20 MISS BLANDING: Your Honor, as your Honor is  
21 aware, this case was brought by a parent of a school  
22 child who is attending the Providence Public School  
23 System. Last year, Daniel Weisman's daughter was  
24 an eighth grade student at the Nathan Bishop Junior  
25 High School, and this year she is attending Classical



1 High School. According to the agreed statement of  
2 facts, the School Department in Providence has allowed  
3 in the past invocation and benediction delivered by  
4 clergy to be offered at the promotional ceremonies  
5 of middle schools and the graduation ceremonies of  
6 the high schools. Those invocations and benedictions,  
7 it is agreed to, to have been in the form of prayer.  
8 And last year, the Assistant Superintendent of Schools,  
9 Arthur Zarella, circulated to the Principals of each  
10 of the middle schools and high schools a circular  
11 which describes what's called in the circular  
12 non-sectarian prayer, and purports to advise what  
13 kind of prayer is appropriate for public ceremonies.

14 We have submitted as part of the agreed statement  
15 of facts the invocation and benediction which was  
16 delivered by Rabbi Gutterman at the Nathan Bishop  
17 Middle School last year. We have also submitted a  
18 list of the names and church affiliations of clergy  
19 as they were printed in programs and distributed by  
20 the various high schools and middle schools within  
21 the last several years. It's clear from the programs  
22 that were printed, and also as a part of the agreed  
23 statements of facts, that not all of the middle  
24 schools or all of the high schools have traditionally  
25 included invocations and benedictions in the form of

1 prayer as part of their ceremony. It's our position  
2 that this practice has to be evaluated under the  
3 three-pronged Lemon test, and that in reviewing  
4 the prior court decisions, both in the Supreme Court  
5 and in the lower courts, in light of that test, that  
6 the practice of the Providence School Department  
7 fails each prong of the Lemon test. There have been  
8 several cases that are cited in my memorandum that  
9 had said that prayer is inherently a religious  
10 activity and that the purpose of prayer can only  
11 be religious in nature.

12 THE COURT: What is prayer?

13 MISS BLANDING: Well, your Honor, a prayer, I  
14 believe in the amicus brief, there was a definition  
15 of prayer.

16 THE COURT: How about your definition of prayer?

17 MISS BLANDING: My definition of prayer would  
18 be anything that calls upon God in any way, either  
19 God's blessing or God's assistance or anything like  
20 that. A prayer is a request to a god or a higher being.

21 THE COURT: Suppose that Rabbi Gutterman said  
22 this: For the legacy of America where diversity  
23 is celebrated and the rights of minorities we are  
24 grateful to our fellow citizens, we thank you.  
25 May these young men and women grow up to enrich it

1 for the liberty of America which we all join, we  
2 thank you. May those new graduates grow up to guard  
3 it. For the political process of America which all  
4 its citizens may participate, for its court system  
5 where all can seek justice, we are grateful to our  
6 fellow citizens. May those we honor this morning  
7 always turn to it in trust. Suppose he said that,  
8 would you have any objection to that?

9 MISS BLANDING: No, your Honor.

10 THE COURT: In other words, the only thing that  
11 you object to is an appeal to a deity.

12 MISS BLANDING: That's correct, your Honor.

13 THE COURT: Suppose he said: My fellow citizens,  
14 to each according to his needs, from each according  
15 to his abilities. Would you let him say that?

16 MISS BLANDING: Yes, your Honor.

17 THE COURT: Because it's communist doctrine and  
18 communism denies a deity, right?

19 MISS BLANDING: No, your Honor.

20 THE COURT: So you can preach communism at an  
21 invocation, but he can't refer to "in God we trust."

22 MISS BLANDING: I don't think there has ever  
23 been a Supreme Court case where the Court has allowed  
24 a preaching or a prayer or an invocation in a school  
25 setting to a deity. I think that all of the cases,

1 all of the cases that the United States Supreme  
2 Court have decided suggest that when you're dealing  
3 with a public school setting, that it's necessary  
4 to be extremely careful and perhaps impose a more  
5 severe test than one would in any other circumstances  
6 because of the unique nature that the public schools  
7 fulfill.

8 THE COURT: Do you agree with the amicus brief  
9 that says inspirational secular speech is all right?

10 MISS BLANDING: Yes.

11 THE COURT: Okay, go out and win one for the  
12 Gipper, that's perfectly all right?

13 MISS BLANDING: Yes.

14 THE COURT: Okay.

15 MISS BLANDING: What we are objecting to is the  
16 School Department's allowance of a prayer to a higher  
17 being.

18 THE COURT: Do you see any prior restraint  
19 problem here?

20 MISS BLANDING: No, because what we are asking  
21 for, your Honor, is that right now I think it's  
22 clear from the circular that's been submitted to all  
23 of the Principals and that Mr. Lee has said that he  
24 gave to Rabbi Gutterman, that what the school expects  
25 is a prayer.

1 THE COURT: Okay.

2 MISS BLANDING: And that the school is sanctioning  
3 a prayer. What we would like is ---

4 THE COURT: But you want them to send out a  
5 circular that says: **Thou** shall not pray.

6 MISS BLANDING: If the School Department is going  
7 to request individuals to give invocations and bene-  
8 dictions, I think it's necessary for them to make  
9 clear that they want it to be what the amicus brief  
10 said, a secular inspirational message and that prayer  
11 is not allowable in a public school setting. If the  
12 School Department did that, if they were enjoined  
13 from suggesting or in any way allowing or authorizing  
14 the inclusion of prayer in graduation ceremonies,  
15 then we would be satisfied with that.

16 THE COURT: What do we do if they have Joe **Dokes**  
17 who's a born-again Christian, who was asked to give  
18 the invocation or the benediction and he does mention  
19 God?

20 MISS BLANDING: I think, your Honor, if the  
21 School Department has made it clear to the individual  
22 that they are asking to give an opening inspirational  
23 message, that it cannot be a prayer, that that's  
24 all they can do, if they ask, if they ask an outside  
25 individual to deliver an opening statement ---

1 THE COURT: Well, how about the situation now?  
2 Except for that circular, if they simply said to  
3 Rabbi Gutterman, can you show up next Wednesday  
4 night at 7:30 to open our graduation ceremony, and  
5 Rabbi Gutterman went there and gave the invocation  
6 that's indicated, can he do that?

7 MISS BLANDING: I think that, first of all, I  
8 think that the words invocation and benediction  
9 are ambiguous. I mean, to me if someone said "Will  
10 you give an invocation?" I would assume they meant  
11 a prayer because to me ---

12 THE COURT: But you agree that an inspirational  
13 secular speech may be made?

14 MISS BLANDING: Yes, your Honor, but what I'm  
15 saying is ---

16 THE COURT: Why can't you make an inspirational  
17 secular invocation?

18 MISS BLANDING: You can. What I am suggesting,  
19 your Honor, is that the word "invocation" I think  
20 means different things to different people. What  
21 my position is is that the School Department now,  
22 at the very least, has not made it clear, in fact  
23 they've gone the other way, they've made it clear  
24 that it is allowable to give prayers.

25 THE COURT: Suppose you had a School Committee

1 composed entirely of lawyers.

2 MISS BLANDING: Mm-hmm.

3 THE COURT: Who said "Rabbi Gutterman, we want  
4 you to come to this graduation ceremony and make  
5 an opening and a closing statement." Do you have  
6 any problem with that?

7 MISS BLANDING: I think that ---

8 THE COURT: And he gets up and he gives this  
9 statement.

10 MISS BLANDING: I think that because of the past  
11 practice and because of the general knowledge that  
12 prayers have been used in the past, that the School  
13 Department needs to do more than just say "We want  
14 you to make an opening and a closing." I think that  
15 they need to say it can't be a prayer. It can be  
16 an inspirational message, that that's what we would  
17 like, but it needs to be not a prayer.

18 THE COURT: And that's not a prior restraint?

19 MISS BLANDING: No, I don't think so, your Honor,  
20 any more than if you invited someone to deliver, to  
21 deliver an opening ceremony in a classroom, that  
22 you're going to tell them that they can't pray. I  
23 mean, if, certainly I doubt that the Supreme Court  
24 would uphold a situation where, for instance, the  
25 state said every morning we are going to take an

1 outside agent into the school and ask him to deliver  
2 an opening message, and that opening message happened  
3 to be a prayer every single time.

4 THE COURT: That would be pretty obvious after  
5 a while, wouldn't it?

6 MISS BLANDING: Well, I think it's pretty obvious  
7 here, too. I think it's very obvious, that's been  
8 the practice. Each time it's clergy that are asked  
9 to deliver this. We have agreed that they are  
10 authorized and allowed and that it's been a past  
11 practice for them to deliver invocations and bene-  
12 dictions in the form of prayer. We've agreed to  
13 that.

14 THE COURT: And the Defendant says indeed that's  
15 the case, so it's all right, it's always been done.

16 MISS BLANDING: That's right, but it isn't always  
17 done because it's also clear from the agreed statement  
18 of fact that there are some schools, both at the  
19 middle school and the high school level, that do not  
20 include prayers in their graduation ceremonies. So,  
21 yes, it's been a past practice to allow it. Yes,  
22 it's been a past practice to authorize it. But is  
23 it universally done in the schools? No.

24 THE COURT: What do you think about the distinc-  
25 tion that's made in the amicus brief that says Marsh



1 doesn't apply here because public schools didn't  
2 exist at the time the Constitution was adopted,  
3 that public schools, that is, free public schools  
4 are a fairly recent historical development in terms  
5 of 200 years of constitutional history?

6 MISS BLANDING: I agree that Marsh doesn't  
7 apply here, but I'm not sure that I would use the  
8 same reasoning.

9 THE COURT: You might have a problem with that  
10 reasoning, might you, because the fact of the matter  
11 is the history of the whole situation here is that  
12 the first public schools in this country, beginning  
13 with the founding of this country, and well beyond  
14 the establishment of the Constitution, were all  
15 religious in nature. That was the reason for them.  
16 They were religious schools, isn't that so?

17 MISS BLANDING: I don't know, your Honor.

18 THE COURT: I think if you look at the history,  
19 you'll find that to be the case. So if you make  
20 that argument, you could be in trouble.

21 MISS BLANDING: Even if that is the case, your  
22 Honor, I still don't think Marsh applies here for  
23 two reasons. One is that the case of Edwards vs.  
24 Aquilar was decided after Marsh and applied the  
25 Lemon test to a school situation. The United States

1 Supreme Court has never applied the Marsh test to  
2 a school situation. The second is that in the  
3 Marsh case, the Court relied on the fact that the  
4 Legislature had always in the entire history of  
5 the country opened with a prayer. In this particular  
6 case, it's not even true that now every school opens  
7 graduation ceremony with an invocation and benediction  
8 because even within the school system itself, that has  
9 never been the case and is not the case now. So there  
10 is not that kind of history that ---

11 THE COURT: How about those who have been doing  
12 it, can continue to do it, and those who haven't  
13 done it, stop them from doing it?

14 MISS BLANDING: I don't think so, your Honor,  
15 but that's not the case. In any case, that's not  
16 the situation that is presently before the Court.  
17 I would take the position that Marsh does not apply  
18 to a public school setting. And even though this is  
19 not an actual classroom setting, it is certainly  
20 public school setting, and if you compare this to  
21 cases like Jaeger, for instance, when they are talking  
22 about invocations before football games, surely a  
23 graduation ceremony is much more important and  
24 significant in the life of a child than is a football  
25 game or a pep rally.

1 THE COURT: You're not a football fan, that's  
2 the problem with that argument.

3 MISS BLANDING: That's true, your Honor, or a  
4 school assembly.

5 THE COURT: You don't know how important it is  
6 to win that Thanksgiving Day game, all right?

7 (LAUGHTER)

8 MISS BLANDING: So I would submit, your Honor,  
9 some of the ---

10 THE COURT: Some of them who will show up for  
11 the football game won't show up for the graduation,  
12 all right?

13 MISS BLANDING: I'm sure that's true, your Honor,  
14 I'm sure that's true. But it puts a real burden on  
15 students. I mean, the school has made a point of  
16 saying that graduation ceremonies are voluntary,  
17 and that's true, we have agreed to that fact. But  
18 it certainly puts a burden, an unfair burden, and  
19 I think an unconstitutional burden, on a school child  
20 who does not wish to participate in a school-promoted  
21 activity that includes prayer to say you don't have  
22 to come to your own school graduation if you don't  
23 want to. I have nothing further, your Honor.

24 THE COURT: Okay. Mr. Rotella.

25 MR. ROTELLA: Obviously, your Honor, if your

1 Honor has read the brief that we've submitted in this  
2 particular matter, we take the position that Marsh  
3 is in fact, should be the test in this situation.  
4 I also point out in that brief the case of Stein.

5 THE COURT: Is that the Sixth Circuit?

6 MR. ROTELLA: That's the Sixth Circuit case,  
7 Stein vs. Plainville Schools.

8 THE COURT: There are other Circuits that go  
9 a different way.

10 MR. ROTELLA: Yes, there are other Circuits  
11 that go a different way, but most of those Circuits  
12 are dealing with activities that are not graduation  
13 ceremonies. They're dealing with football games.

14 THE COURT: What difference does it make if the  
15 graduation takes place in the Veterans Auditorium  
16 and not on the school grounds?

17 MR. ROTELLA: I'm not talking about the location,  
18 your Honor, I'm talking about the spirit of the  
19 thing itself, of the activity itself. In a football  
20 setting, you have a coach, these children are looking  
21 up to a coach. He is giving them an inspirational-type  
22 rah-rah.

23 THE COURT: That wasn't what was happening in  
24 that case though, was it? It was the coach who was  
25 giving the invocation.

1 MR. ROTELLA: But there were other individuals,  
2 they were selecting other individuals of the clergy  
3 who were out there.

4 THE COURT: They were clergymen for the most  
5 part.

6 MR. ROTELLA: Right, right. What I'm saying is  
7 the situation in its totality was a different situation  
8 than a graduation-type ceremony. When you look at  
9 Marsh, okay, when you look at, as I've pointed out  
10 in that brief that I've submitted, your Honor, there  
11 was a very interesting dissent done by Judge Rooney  
12 with regard to the -- if I can just find it -- in the  
13 Jaeger case, the football case, okay, where he  
14 basically looks at this and comes to a conclusion  
15 that says in effect there's a common thread. It  
16 says, "A common sense balancing of the danger of  
17 government establishment of religion with the  
18 recognition of religious traditions as part of our  
19 nation's fabric." The Court pointed out just a few  
20 minutes ago that the first public schools in the  
21 country were religious schools.

22 THE COURT: It's never meant anything in consti-  
23 tutional dimensions.

24 MR. ROTELLA: No, it has not.

25 THE COURT: For some reason or other. Why was

1 Harvard University started, all right, you begin  
2 there. Brown University. But it's never meant  
3 anything in the constitutional dimension, even  
4 to those who look to the history of the Constitution  
5 look back to 200 years and say what did these people  
6 have in mind when they said establishment of religion.

7 MR. ROTELLA: Mm-hmm.

8 THE COURT: None of the cases tested against  
9 that historic background, that all of the schools  
10 were religious schools. That's what started them.  
11 They were started so that people could learn to read  
12 so they could read the Bible. That's what it was  
13 all about in the beginning. Free public schools are  
14 a Nineteenth Century development. But you don't see  
15 that in any of these cases. What you see in these  
16 cases is a pretty consistent, remarkably consistent  
17 point of view from the Supreme Court that there shall  
18 not be prayer in the public schools. How do you get  
19 Marsh in the door on that one?

20 MR. ROTELLA: I think you get Marsh in the door  
21 by looking at the circumstances.

22 THE COURT: You can say anything else you want  
23 to say in the public schools, but you can't pray.  
24 That's the one thing you cannot do.

25 MR. ROTELLA: You can give a secular-type prayer,

1 but not a prayer in the ---

2 THE COURT: You can't call upon a deity. You  
3 can't make an appeal to a deity. Isn't that what  
4 all these cases say? Isn't graduation a part of the  
5 school process, so why is this constitutional?

6 MR. ROTELLA: I think the Stein Court breaks  
7 away from that mold. I think the decision in Stein  
8 looks at Marsh and says it has the same applicability  
9 to the schools.

10 THE COURT: But you have the situation where the  
11 school prayer cases, where a particular prayer is  
12 prescribed, that's not appropriate, a moment of  
13 silence is not appropriate. There's no praying  
14 to be done on the public school premises, period.

15 MR. ROTELLA: Then the same should hold true  
16 for Legislatures. The same should hold true for  
17 the opening of court sessions. The same should hold  
18 true for all the other areas. I mean, the Supreme  
19 Court has drawn a line of demarcation. The line  
20 of demarcation says public schools are exempt and  
21 everyone else you can do it just a little bit. We  
22 walked in this morning and your Clerk gave an invoca-  
23 tion that included the name of God, okay. If you've  
24 got a dollar bill in your pocket or a quarter or a  
25 dime in your pocket, it has the name of God on it.

1           Why is it so ---

2           THE COURT: The pledge of allegiance has God in  
3           it.

4           MR. ROTELLA: The pledge of allegiance has God.

5           THE COURT: Can you use that in school?

6           MR. ROTELLA: I think they did up until ---

7           THE COURT: They did?

8           MR. ROTELLA: Yes, I think.

9           THE COURT: Do they still?

10          MR. ROTELLA: Yes, they do.

11          THE COURT: So God gets in there somehow.

12          MR. ROTELLA: The point that I'm trying, I think  
13          the point of the cases here, your Honor, are where  
14          do you draw the line of demarcation? Where do you  
15          say God is not allowable or the use of the word "God"  
16          or anything that relates to that is not allowable in  
17          the public schools? I think Marsh takes a look at  
18          it, Lemon takes a look at it and they set up a  
19          three-pronged test.

20          THE COURT: Doesn't the mention of God, or  
21          whatever, advance religion?

22          MR. ROTELLA: I don't see how. Why should it  
23          advance religion? Just because you mention the name  
24          "God," where does that advance religion, okay? If  
25          that be the case, then let's take it off the coin,



1 let's take it out of the Legislature, let's take it  
2 out of the openings of court sessions and be done  
3 with it so that the next generation of children, okay,  
4 when they reach that point in time when a Court is  
5 opening, they can say, "We're all here, let's open  
6 it up and be done with it." Because that's where  
7 we're going as far as ceremonial prayer is concerned.  
8 We're going to that point where no mention of God  
9 means that the pillars of the society that we have  
10 developed here over the past couple of years ---

11 THE COURT: Whenever a Judge is sworn in here,  
12 we have an invocation and a benediction which is a  
13 prayer as defined.

14 MR. ROTELLA: When we have a swearing-in of a  
15 President, I believe they have it done on the Bible  
16 in most instances. The one I can remember most was  
17 President Johnson being sworn in in the airplane in  
18 Dallas in 1963. The point I'm trying to make, your  
19 Honor, is that I think, okay, there is a place for  
20 a ceremonial-type invocation and benediction. I  
21 think Marsh, in the Marsh decision, the Court has  
22 looked at the ability of someone to give an invoca-  
23 tion at a legislative session, okay, and it's carried  
24 forward in Stein to apply to those particular-type  
25 ceremonial sessions that would be a high school

1 graduation. Thank you, your Honor.

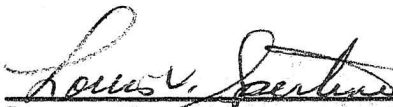
2 THE COURT: Anything else?

3 MISS BLANDING: No, your Honor.

4 THE COURT: I'm going to take the matter under  
5 advisement and we'll file a written opinion as soon  
6 as we can. Court will be in recess.

7 (PROCEEDINGS CONCLUDED)

8  
9  
10 I hereby certify that the foregoing, to wit,  
11 pages 2 through 22, is a true and correct transcript  
12 of proceedings had in above-captioned case.  
13

14   
15 Louis V. Spertini  
16 Official Court Reporter  
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